



To: Honorable Mayor and City Council Members

From: Wendell K. Willard

Date: For Submission onto the June 16, 2015 City Council Agenda

Agenda Item: Resolution to Approve and Authorize the City Manager to Execute an Intergovernmental Agreement between the City of Atlanta and the City of Sandy Springs for Repairs and Future Maintenance of the Lake Forrest Dam.

City Attorney's Recommendation:

The City Attorney recommends that the City Council approve the Agreement between the City of Atlanta and the City of Sandy Springs Lake Forrest Drive Dam ("IGA") which appears as Exhibit A to the attached resolution.

Background and Discussion:

In July, 2009, the Environmental Protection Division of the Georgia Department of Natural Resources reclassified the Lake Forrest Dam from a Category II dam to a Category I dam, pursuant to the Georgia Safe Dams Act, O.C.G.A. § 12-5-370, et seq. ("Safe Dams Act"), due to a finding of probable loss of human life if the Dam fails. As a result, certain corrective actions and improvements must be taken to mitigate against such loss. Approximately one-half of Lake Forrest Drive lies across the crest of the Dam and is within the City of Atlanta, and approximately one-half of the right-of-way lies within the City of Sandy Springs. There are no records placing title to the Dam structure in any entity or person.

Sandy Springs and Atlanta have agreed to share jointly in addressing the Dam's deficiencies. IGA, which is in basic form, is the result of negotiations between the attorneys for the Cities. The IGA is attached to the resolution as Exhibit A and sets forth the terms for repairs and future maintenance of the Dam.

Alternatives:

There are no viable alternatives. Corrective actions and improvements must be made to the Dam to mitigate against the loss of human life and property.

Financial Impact:

\$800,000 has been earmarked for this Project.

Attachments:

Resolution with attached IGA

RESOLUTION NO. 2015-XX-XX

**STATE OF GEORGIA
COUNTY OF FULTON**

RESOLUTION TO APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE CITY OF SANDY SPRINGS FOR REPAIRS AND FUTURE MAINTENANCE OF THE LAKE FORREST DAM

WHEREAS, Lake Forrest Dam is located near the 4600 block of Lake Forrest Drive and impounds water for a contiguous lake that is approximately .9729 acres within the Lake Forrest community in Sandy Springs; and

WHEREAS, title to the contiguous lake ("Lake Forrest") and two other smaller lakes that feed into Lake Forrest is held by Three Lakes Corporation, LLC, a nonprofit corporation created at the time of the development of the surrounding community and to which all owners of property contiguous to the lakes are members; and

WHEREAS, approximately one-half of the public road known as Lake Forrest Drive lies across the crest of the Dam and is within the City limits of Atlanta; and

WHEREAS, the remaining approximate one-half of the right-of-way lies within the City limits of Sandy Springs, as successor-in-interest to the public road system from Fulton County, Georgia; and

WHEREAS, on or about July 30, 2009, the Environmental Protection Division of the Georgia Department of Natural Resources ("EPA") reclassified the Lake Forrest Dam from a Category II dam to a Category I dam, pursuant to the Georgia Safe Dams Act, O.C.G.A. § 12-5-370, et seq. ("Safe Dams Act"), due to a finding of probable loss of human life if the Dam failed; and

WHEREAS, as a result of the reclassification, certain corrective actions and improvements must be taken to mitigate against the loss of life and property and to ensure the Dam is compliance with the Safe Dams Act; and

WHEREAS, Sandy Springs and the City of Atlanta have agreed to share jointly in addressing the Dam's deficiencies in light of the risk for harm to human life and property, the location of the road across the top of the Dam, and the lack of any records placing title to the Dam structure in any entity or person; and

WHEREAS, attorneys for Sandy Springs and the City of Atlanta have negotiated an intergovernmental agreement that sets forth the terms and conditions upon which the parties will undertake to meet EPA requirements, pursuant to the Safe Dams Act, and to mitigate against risks and potential harm to life and property in the event of a failure of the Dam, and address future joint maintenance of the Dam; and

WHEREAS, Sandy Springs and the City of Atlanta desire to enter into the negotiated intergovernmental agreement upon the terms and conditions contained therein, in the basic form attached hereto as Exhibit A;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA, THAT:

1. The Agreement Between the City of Atlanta and the City of Sandy Springs, Lake Forrest Drive Dam ("IGA"), is hereby approved in basic form as attached hereto as Exhibit A; and
2. The City Manager and the City Attorney are hereby authorized to make such changes to the attached IGA as may be deemed reasonable and necessary; and
3. The City Manager is hereby authorized to execute the final IGA with the City of Atlanta, in the basic form attached hereto as Exhibit A; and
4. The City Manager and City Attorney are hereby authorized to take such actions deemed necessary or prudent to effectuate the intent of this resolution.

RESOLVED, this the 16th day of June, 2015.

Approved:

Russell K. Paul, Mayor

Attest:

Michael Casey, City Clerk

(SEAL)

EXHIBIT A

**AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE CITY OF SANDY SPRINGS
LAKE FORREST DRIVE DAM
(Basic Form)**

**AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE CITY OF SANDY
SPRINGS
LAKE FORREST DRIVE DAM**

This Intergovernmental Agreement ("Agreement") is entered into as of the ____ day of _____, 20__ ("Effective Date"), by and between the City of Atlanta ("Atlanta") and the City of Sandy Springs ("Sandy Springs") (collectively, Atlanta and Sandy Springs may be referred to as "Parties" or individually as "Party").

WHEREAS, the Lake Forrest Dam is a dam located near the 4600 block of Lake Forrest Drive, located in LL 94 & 119 of the 17th District of Fulton County, Georgia, which impounds water for a contiguous lake that is approximately .9729 acres, more or less, within the Lake Forrest community ("Dam"); and

WHEREAS, title to the contiguous lake (Lake Forrest) and two other smaller lakes which feed into Lake Forrest is held by Three Lakes Corporation, LLC, a nonprofit corporation created at the time of the development of the surrounding community and to which all owners of property contiguous to the lakes are members; and

WHEREAS, approximately one-half of the public road, known as Lake Forrest Drive, which lies across the crest of the Dam and within the city limits of Atlanta and the remaining approximate one-half of the right of way lies within the city limits of Sandy Springs, as the successor-in-interest to the public road system from Fulton County, Georgia; and

WHEREAS, on or about July 30, 2009, the Environmental Protection Division of the Georgia Department of Natural Resources reclassified the Dam from a Category II dam to a Category I dam, pursuant to the Georgia Safe Dams Act, O.C.G.A. § 12-5-370 *et seq.* ("Safe Dams Act"), due to a finding of probable loss of human life if the dam failed, specifically including the inundation and flooding of the property located at 4564 Meadow Drive, as more particularly set forth in a letter to Sandy Springs, dated July 30, 2009, which is attached and incorporated herein as **Exhibit "A"**; and

WHEREAS, as a result of the reclassification, certain corrective actions and improvements must be taken to mitigate against the loss of life and property and to ensure the Dam is compliant with the Safe Dams Act; and

WHEREAS, as a result of information acquired through a Petition for Declaratory Judgment proceeding filed by Sandy Springs on April 26, 2010, Civil Action File No. 2010-CV-184848, which has been dismissed without prejudice against all defendants, the Parties agreed to jointly share in the responsibility to address the Dam's deficiencies in light of the risk for harm to human life and property, the location of the

road across the top of the dam, and the lack of any records placing title to the structure in any entity or person; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions to jointly share in the overall Project Costs (defined herein) in order to facilitate the work required to be undertaken by Atlanta and Sandy Springs to meet the requirements of the Environmental Protection Division of the Georgia Department of Natural Resources, pursuant to the Safe Dams Act, and to mitigate against risks and potential harm to life and property in the event of a failure of the Dam, as further described below.

NOW THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration mutually benefitting the Parties, the sufficiency of which is acknowledged by the Parties, the Parties agree to the following:

1. Purpose.

The purpose of this Agreement is to provide for the joint participation of the Project Costs on a 50/50 basis for the design, engineering, management and construction of improvements necessary to bring the Dam into compliance with the Safe Dams Act, and as otherwise deemed necessary by the Parties to mitigate against material risks of loss of life and property within the designated potential impact area of the Lake Forrest community. The Dam project will consist of two phases: Phase 1 will consist of draining Lake Forrest to eliminate any immediate risks to the impact area due to a potential Dam failure; and Phase 2 will consist of implementing long-term improvements, repairs and/or alterations to the Dam or such other long-term options as may be agreed upon by the Parties for the purpose of complying with the Safe Dams Act, including all work necessary and incidental to the purposes described herein ("Project"). Both Parties acknowledge and agree that the final design and plans for Phase 2 will be determined and agreed upon by the Parties after considering viable options, consistent with the purposes of the Project described herein. Any improvements made to the Dam or Dam area that are not necessary to meet the purposes of the Project, as described herein, are not the responsibility of the Parties, pursuant to this Agreement.

2. Professional Services for Design, Engineering and Construction Management Services.

a. Sandy Springs shall be responsible for entering into an appropriate agreement to engage Schnabel Engineering ("Schnabel") as the Engineer of Record for the overall Project, which shall include all design, engineering, construction management, and other professional services as may be deemed necessary and appropriate by the Parties for the design and construction of the Project. Professional Services shall include without limitation:

- Plats and surveys of all land and easements required for the Project;
- Laboratory soils testing;
- Roadway design and construction plan services;
- Water and sewer relocation design;

- Design alternatives and related analysis for the Project;
- Development of an engineering cost estimate for the Project;
- Development of 30%, 60%, 90% and 100% construction plans, drawings and technical specifications;
- Permitting services;
- Community outreach and communication;
- Assistance with the development of solicitation package(s) for the construction of the Project;
- Design clarification services during construction phase of the Project
- Construction Management services during construction phase of the Project; and
- Inspection Services (upon request).

For purposes of this Agreement, the engineering, design documents, construction plans, drawings and technical specifications are referred to as "Plans." Final Plans for the Project will be approved by both Parties. The Plans may be amended or changed by written agreement of both Parties' authorized representative.

b. Sandy Springs shall request a separate cost and scope of work proposal from Schnabel for Phase 1 of the Project, which shall include a design-build concept to drain the Lake, consistent with the purposes of the Project. Sandy Springs shall also request a separate cost and scope of work proposal from Schnabel for Phase 2 of the Project, which shall include design, engineering and construction management services for the Phase 2 of the Project, consistent with the purposes of the Project. The construction work for Phase 2 of the Project shall be separately procured based upon the final Plans for Phase 2, as approved by the Parties. Sandy Springs and Atlanta shall jointly participate in the development of a final cost and scope of work proposal for Phase 1 and Phase 2, which shall be approved in writing by both Parties upon reaching agreement with Schnabel. Thereafter, Sandy Springs shall authorize Schnabel to proceed with work in accordance with the final approved proposal for the Project.

c. The Plans shall be provided to Atlanta for its review and approval at each design phase, which review and approval shall not be unreasonably delayed or withheld. Atlanta and Sandy Springs shall jointly participate in regular design progress meetings and communications with Schnabel as may be necessary to oversee the design process to ensure completion of the Plans in accordance with the requirements of the Project and the final approved proposal for the Project. Sandy Springs agrees to enforce its agreement with Schnabel as may be necessary and appropriate to ensure Schnabel's performance in accordance with professional standards and the final approved proposal and this Agreement. Sandy Springs agrees to take all appropriate actions to enforce its agreement with Schnabel to ensure performance of the professional services provided in accordance with the schedule and terms of the approved proposal and the purposes of the Project described herein.

d. Costs for any specific directives or requests made from one of the governing authorities for professional services from Schnabel or other professional organization shall be borne by the requesting Party, including for example engineering services to explore options and analyses, unless the other Party agrees to participate in the costs for such additional work. Additionally, the parties agree that the costs incurred by Schnabel, or other third party engaged for this Project, for any appearance or attendance before the governing authority of either Party (in a public meeting or briefing) shall be the sole responsibility of the Party before whose governing authority the representatives have appeared.

e. The Parties further acknowledge and agree that Schnabel Engineering has provided certain professional services prior to and through the Effective Date of this Agreement, including services related to the installation and monitoring of certain monitoring wells, which work shall be included as Project Costs related to the design and engineering services for the Project. All invoices for professional services provided by Schnabel prior to the Effective Date of this Agreement shall be paid by Sandy Springs, and Atlanta's ½ share of such costs shall be reimbursed to Sandy Springs according to approved invoiced amounts and upon execution and approval of this Agreement.

3. Communications Plan and Community Outreach.

Atlanta and Sandy Springs shall jointly participate in developing and implementing a communications and community outreach plan regarding the work, schedule of the Project and potential impacts to the community as a result of the Project, which may include traffic delays, road closures and temporary inconveniences related to overall construction activities. Such communications and community outreach shall be jointly developed and issued by the Parties upon final review and approval of the Parties, through the Parties' respective communications and project management personnel. Each party shall be responsible for the cost of its own personnel involved with such work. The Parties shall share equally in the costs of any external resources needed for such work.

4. Land Acquisition.

The Parties shall jointly share on a 50/50 basis all Project Costs related to the acquisition of all easements, access rights and land necessary for the Project, pursuant to the Plans. Each Party shall be responsible for acquiring all property interests for the Project that are located within each Party's respective jurisdiction. The Parties agree to exercise all due diligence and reasonable efforts, including the power of eminent domain, as may be necessary to expeditiously and timely acquire all property interests needed for the Project, as identified in the final Plans. Each Party shall utilize its own internal or external forces, as it deems necessary and appropriate, to timely complete the land acquisition process. Title of property interests acquired for the Project shall be placed in the name of the Party acquiring the land interest and in which the land sits. Each Party agrees to obtain all necessary authorization from the jurisdiction's respective governing authorities for the purpose of acquiring property interests needed

for the Project. Responsibilities of the Parties for all Project land acquisition shall include all title work, appraisals, environmental investigations, land acquisition negotiations, surveys and other services as may be necessary to acquire the needed property interests free and clear of any title encumbrances. Each Party shall maintain and provide to the other Party invoices, cost summaries and other applicable accounting for all Project Costs related to Project land acquisition work on a monthly basis for the purpose of calculating a final accounting and reconciliation of the Parties' respective share in such costs as part of the overall Project Costs.

5. Construction and Implementation of Phase 1 and Phase 2.

a. Sandy Springs shall be responsible for procuring and entering into a contract for the implementation and construction of the Project separately for each of Phase 1 and Phase 2, in accordance with the final approved Plans. The contracts for the two construction phases of the Project shall be awarded to a contractor according to the most responsive and responsible bidder or proponent. Atlanta shall have the opportunity to review and approve the solicitation package prior to advertisement to ensure the package is complete, accurate and inclusive of terms and conditions necessary to effectively and efficiently complete the Project with appropriate owner enforcement provisions and tools, e.g. liquidated damages. Sandy Springs shall comply with all applicable State and local laws for the procurement and award of any construction contracts for the Project, including Georgia Local Government Public Works Construction Law, O.C.G.A. § 36-91-1, *et seq.* Atlanta and Sandy Springs shall jointly participate in regular periodic progress meetings with the Project contractor to ensure timely completion of the Project in accordance with the Plans and specifications of the final agreements with the contractor.

b. Atlanta hereby consents to and authorizes Sandy Springs, its agents, representatives, and contractors a right of entry onto property and rights of way owned and maintained by Atlanta for the purpose of designing and constructing the Project, which work shall be performed in accordance with this Agreement and the Plans. Sandy Springs agrees that this right to use the Atlanta's rights of way shall be non-exclusive and temporary and shall terminate upon the completion of the Project and shall be and is subject to any existing agreements of record that Atlanta has with any third party, including a public utility.

c. Sandy Springs shall cause the construction of the Project to be completed lien free, in a good workmanlike manner, free of material defects and in compliance with the requirements of all applicable federal, state and local permits, ordinances, building codes, procedures, rules, and regulations and in substantial conformity with the Approved Plans and this Agreement.

d. Sandy Springs, by and through its contractors, shall be responsible for obtaining all permits, licenses, certifications and inspections, necessary for the construction of the Project.

e. Sandy Springs shall cause the repair of any damage to any Atlanta facilities, or any other public or private utilities, or any private property caused by or related to Project construction activities, or take appropriate measures in the event that such activities are a threat to the public health, safety or welfare, including without limitation, dangers or threats to persons or real and personal property within the limits of the Project. Any such damage shall not be considered Project Cost and shall be recovered from the contractor responsible for the damage.

f. Work Conditions. Sandy Springs shall require that any and all contractors, subcontractors or suppliers comply with the applicable provisions of federal, state and local safety laws; perform work in a good workmanlike manner; and take all measures necessary in an effort to prevent accidents, damages, injury or loss to persons and property in the construction of the Project.

g. All costs incurred by Sandy Springs in performance of the services stated above in paragraphs a. through f. of this Section 5, shall be shared pursuant to Section 1. Purpose, as stated herein.

6. Regular Progress Meetings; Cooperation.

The Parties agree to participate through designated representatives in regular progress meetings, at least on a monthly basis as between the Parties, to discuss the progress of the Project in order to keep the progress of the Project moving in an efficient manner and to discuss and resolve potential concerns with the Project on an as-you-go basis. The Parties agree to work in good faith to address and resolve all issues and concerns of the Parties in a manner that does not unreasonably delay the progress of the Project. Additionally, Sandy Springs shall require and hold regular progress meetings in a timely manner and as needed, with Schnabel during the development of the Plans and also with the Contractor during the construction of the Project, which shall be attended by at least one of the Parties' representatives and Schnabel on behalf of the Parties. Each Party shall name an authorized representative and provide the contact information to the other Party, who shall serve as the primary point of contact for communications, meetings and concerns related to the Project. The Parties acknowledge that every contingency that may affect the Project may not be expressly addressed in the final Plans but agree to cooperate with each other in resolving any issues that may arise during the course of the Project with the goal of completing the Project in compliance with the Safe Dams Act.

7. Payment.

Atlanta shall contribute and pay Sandy Springs 50% of the estimated Project Costs for Phase 1 of the Project within thirty (30) days of the Effective Date of this Agreement, which is estimated at the time of this Agreement as \$[REDACTED]. Upon acceptance by the Parties of a cost proposal and scope of work from Schnabel for Phase 2, Atlanta agrees to contribute and pay Sandy Springs 50% of the estimated Project Costs for professional services from Schnabel; and 50% of the estimated Project Costs for the construction phase of Phase 2 within thirty (30) days of approval of the final Plans. For

purposes of this Agreement, "Project Costs" shall include the following costs associated with the design, engineering, land acquisition, construction, oversight and management of the Project:

a. The cost of all labor, materials, bonds and insurance for the design and engineering and development of the Plans and specifications for the Project developed for Phase 1 and 2 of the Project, respectively;

b. The cost of labor, materials, bond premiums (payment and performance bonds), permit fees, impact fees, easement costs, utilities, equipment (acquired or rented), applicable governmental permits, environmental site assessments, hazardous material removal, environmental mitigation and remediation and similar items incorporated into, consumed in the construction of the Project or necessary for the construction of the Project and compliance with this Agreement and any related site or landscaping work incorporated in or related to the Project;

c. Consulting, construction management, design and engineering fees and expenses paid or incurred for outside consultants, designer and engineers in connection with the construction of the Project, including any needed borings, soil analysis or other geotechnical services that are required outside of the Plans;

d. Tree recompense or tree ordinance compliance expenses;

e. Costs for all surveys, plats, environmental assessment and environmental site restoration and mitigation, title work, title insurance policies, attorneys' fees for closing and other costs and all other costs associated with acquiring the property interests needed for the Project;

f. Project Cost Overruns and Changes. Atlanta shall not be responsible for any Project Costs that exceed the Estimated Project Costs specified above, unless Atlanta provides prior approval of any such cost overruns. Sandy Springs shall notify Atlanta within thirty (30) days from incurring costs that exceed the estimated Project Costs, including the basis for the cost overruns and a request seeking approval for the same; provided, however, that Sandy Springs agrees to immediately notify Atlanta of any notice of claim or dispute from a contractor involving additional time for completion and/or additional compensation in excess of the estimated Project Costs. No material changes in the final Plans or Agreement for the construction of the Project shall be made by Sandy Springs without Atlanta's prior approval, including without limitation changes to the completion time and agreement price for the Project or any component of the Project. Atlanta shall not withhold any requested approval unreasonably and shall act promptly in responding; and

g. Final Project Costs. For purposes of this Agreement, Final Project Costs shall include all Project Costs, including any approved Project Overruns, as defined in this

Section, as determined by the Parties after a full reconciliation of all Project Costs upon completion of the Project.

8. Bonds, Insurance and Indemnification.

Sandy Springs shall ensure that all of its contractor(s) or subcontractor(s) for the construction of the Project provide performance and payment bonds for 100% of the costs of the Project. Additionally, Sandy Springs shall cause Schnabel and the contractor for the Project to maintain a policy of general liability insurance and professional liability insurance (as to Schnabel), which names Atlanta and Sandy Springs as additional insureds and certificate holders in appropriate endorsements. Prior to issuing a notice to proceed for the construction of the Project, Sandy Springs shall provide Atlanta a copy of said bonds and a certificate of insurance for all applicable insurance policies.

9. Indemnification. Sandy Springs shall insert terms in the contract with Schnabel and the contractor for the construction of the Project that requires the contractor to indemnify and hold harmless Atlanta and Sandy Springs and their respective, agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Project ("Indemnification Obligation"). The Indemnification Obligation shall not be waived or reduced because Atlanta and/or Sandy Springs approved, required modification of or did not require modification of any plan, calculation or specification concerning or relating to the construction of the Project, nor shall be limited or otherwise reduced by the presence of insurance limits covering the Project work.

10. Relevant Agreements. Each party shall provide the other with copies of all relevant agreements, bonds and insurance certificates evidencing compliance with this Agreement prior to and as a condition of commencement of work on the Project.

11. Inspection and Maintenance of Records.

a. Inspection. Atlanta shall have the right to visit and inspect, monitor and evaluate the Project work at any time to ensure that the work is performed in accordance with the terms of this Agreement, including without limitation, providing an onsite inspector to monitor the daily work. The cost of any visits or inspections by Atlanta will be the responsibility of Atlanta. At any time Atlanta determines that construction or design/engineering work is resulting in materially defective work, Atlanta shall provide notice to Sandy Springs, and Sandy Springs shall immediately cause to remedy any such identified defects as directed by Atlanta. Sandy Springs agrees to notify Atlanta when all Project work is complete and ready for final inspection and invite Atlanta to attend the final inspection or provide a corrections list to Sandy Springs prior to the final inspection.

b. Records. Sandy Springs, and the Project contractor(s), shall keep records, books, correspondence, instructions, drawings, receipts, vouchers, and other

documents related to the construction of the Project ("Records"). Such Records shall be kept in good order and in conformance with generally accepted accounting principles. Sandy Springs shall maintain the Records for a minimum period of four (4) years after the completion of the Project. Sandy Springs shall provide access to Atlanta upon request to all Records for inspection, review, analysis, and, if deemed necessary and appropriate, for an audit at Atlanta's expense.

12. Final Completion; Future Maintenance of the Dam. After substantial completion of the Project, Sandy Springs shall obtain for Atlanta final as-built drawings for review and approval prior to and as a condition of final completion of the Project work. Upon final completion of the Project, Atlanta and Sandy Springs shall assume joint ownership of the Dam for the purpose of future inspections, maintenance and repairs, if and only if the Dam is repaired and maintained as part of the Parties' approved Plans for Phase 2 of the Project such that the Dam remains under the regulation of the Safe Dams Act. The Parties agree that a separate agreement is necessary to define the respective roles and responsibilities as between the parties for the joint inspection, maintenance and repair of the Dam to ensure compliance with the Safe Dams Act. The Parties agree to commence work in good faith towards reaching an agreement for such purposes but no later than thirty (30) days after final completion of the Project.

13. Miscellaneous Provisions.

Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement shall not be modified in any respect except by written instrument executed by or on behalf of the Parties in the manner as this Agreement is executed and specifically referencing such a modification or amendment.

Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.

Severability. In the event any provision or portion of this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.

Notices. Notices and reports described herein shall be delivered or sent to the parties as follows:

To Sandy Springs:
John McDonough, City Manager
City of Sandy Springs
7840 Roswell Road, Building 500
Sandy Springs, GA 30350
Tel: 770-206-1414

With a copy to:
Wendell K. Willard, City Attorney
City of Sandy Springs
7840 Roswell Road, Suite 330
Sandy Springs, GA 30350
Tel: 770-481-7110

To Atlanta:
JoAnn J. Macrina, P.E.
Commissioner
Department of Watershed Management
72 Marietta Street
Atlanta, GA 30303
Fax: 404-658-7194
Tel: 404-330-6081

With a copy to:
City of Atlanta Law Department
Attn: City Attorney
55 Trinity Avenue, S.W.
Suite 5000
Atlanta, GA 30303
Tel: 404-546-4100

Entire Agreement; Amendment; Waiver; Counterparts. This Agreement constitutes the entire agreement between the Parties; it supersedes any prior agreement or understandings between them, oral or written, with respect to the matters addressed herein, all of which are hereby canceled. This Agreement may not be amended or modified except by an instrument in writing signed by both Parties hereto. Waiver of any term or condition of this Agreement shall be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition on this Agreement. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Governance. This Agreement shall be governed by the laws of the State of Georgia.

Default and Termination. Notwithstanding the foregoing, if a Party defaults in the performance of its obligations as set forth herein, and fails to cure such default within thirty (30) days of written notice to the defaulting Party of such default (or if such default is not capable of being cured within thirty (30) days, the defaulting Party has not commenced and diligently pursued such cure to completion within a reasonable amount

of time), this Agreement may be terminated by a Party upon five (5) days' prior written notice to the defaulting Party.

Time is and shall be of the essence in this Agreement.

IN WITNESS WHEREOF, Atlanta and Sandy Springs have executed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

CITY OF ATLANTA, GEORGIA

By: _____

Title: _____

CITY OF SANDY SPRINGS, GEORGIA

By: _____

Title: _____

EXHIBIT "A"

**LETTER TO SANDY SPRINGS FROM EPA
DATED JULY 30, 2009**